

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PATRICIA KAMMEYER, et al.	:	NO. 1:01-CV-649
Plaintiff	:	(Judge Spiegel)
	:	(Magistrate Judge Black)
vs.	:	
CITY OF SHARONVILLE, et al.	:	REPLY MEMORANDUM IN
	:	SUPPORT OF MOTION FOR STAY
	:	OF ORDER DOC. 195 PENDING
Defendants	:	APPEAL FILED BY NON-PARTIES
	:	MICHAEL K. ALLEN HAMILTON
	:	COUNTY PROSECUTOR, JOHN
	:	JAY, INVESTIGATOR AND TERRY
	:	GAINES (FORMER ASST.
	:	PROSECUTOR)
	:	IMMEDIATE RULING
	:	REQUESTED

MEMORANDUM

Non-parties, Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (investigator) and Terry Gaines (former asst. Prosecutor) move that this Court grant a stay of Order Doc. 195 which denied their Motion to Quash pending resolution of there appeal by the Sixth Circuit Court of Appeals. The Kammeyer Plaintiffs responded saying that they filed a Motion to Dismiss the Appeal and that Non-parties Michael K. Allen (former) Hamilton County Prosecutor, John Jay (Investigator) and Terry Gaines (Former Assistant Prosecuting Attorney) cannot appeal unless they subject themselves to a contempt citation. The Kammeyer Plaintiffs, argue therefore, that there is no likelihood of success.

The Order which is subject of the appeal is extremely similar to this Court's Order in Chesher v. Allen which involved discovery of the prosecutors' file and depositions of assistant prosecutors in the Morgue photograph case. This Courts order for discovery was set aside in

Chesher v. Allen No. 04-3158, 04-3179, 04-3284 2005 U.S. App. LEXIS 352 (6th Cir., Jan. 5, 2005) by a Writ of Mandamus.

Non-parties, Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (investigator) and Terry Gaines (former asst. Prosecutor) have today filed a Petition for Writ of Mandamus in this case. In light of the Sixth Circuit ruling in the Chesher case, there is a substantial likelihood of success in this case. An immediate ruling upon this request for a stay is requested because the Kammeyer Plaintiffs issued new subpoenas on February 9, 2005 for depositions scheduled for Wednesday, February 16, 2005.

If this Court does not rule on the request for a stay by Monday, February 14, 2005, Non-parties, Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (investigator) and Terry Gaines (former asst. Prosecutor) will have to request an emergency stay before the Sixth Circuit.

CONCLUSION

Non-Parties Non-parties, Michael K. Allen (former) Hamilton County Prosecutor, John Jay, (investigator) and Terry Gaines (former asst. Prosecutor) respectfully request the Motion to Stay Order, Doc. 195 Pending Appeal be granted.

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

/s/Mark C. Vollman, 0007040P
Mark C. Vollman, 0007040P
Assistant Prosecuting Attorneys
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
513/946-3144

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2005, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system which will send notification of such filing to the following, and I hereby certify that I have mailed by United States Postal service the document to non CM/ECF participants.

Lawrence E. Barbieri, Esq.
Schroeder, Maundrell, Barbieri & Powers
11935 Mason Road, Suite 110
Cincinnati, Ohio 45249

Thomas T. Keating, Esq.
Keating, Ritchie & Swick
8050 Hosbrook Road, Suite 200
Cincinnati, Ohio 45236

Randolph H. Freking, Esq.
Leslie E. Ghiz, Esq.
Freking & Betz
215 East Ninth Street, Fifth Floor
Cincinnati, Ohio 45202

Alphonse A. Gerhardstein, Esq.
Paul Laufman, Esq.
617 Vine Street, Suite 1409
Cincinnati, Ohio 45202

Brian E. Hurley, Esq.
Robert J. Gehring, Esq.
Crabbe, Brown & James
30 Garfield Place, Suite 940
Cincinnati, Ohio 45202

/s/Mark C. Vollman 0007040P
Mark C. Vollman, 0007040P
Assistant Prosecuting Attorney